

1 MR. PEREZ-MARQUES: I am, Your
2 Honor.

3 JUDGE SIPPEL: Do you want to move
4 it in?

5 MR. PEREZ-MARQUES: I would like
6 to move it in, Your Honor.

7 JUDGE SIPPEL: Is there any
8 objection?

9 MR. SCHMIDT: No objection, Your
10 Honor.

11 JUDGE SIPPEL: It is received into
12 evidence as Comcast Exhibit 527.

13 (Whereupon, the above-referred to
14 document, previously marked as
15 Comcast Exhibit No. 527 for
16 identification, was received into
17 evidence.)

18 Okay. Thank you.

19 BY MR. PEREZ-MARQUES:

20 Q Now, another reason, Mr. Furman,
21 that you can lose advertising dollars is
22 because the advertiser chooses to spend its

1 advertiser dollars differently, isn't that
2 right?

3 A Yes.

4 Q They can choose not only to
5 advertise on a different TV network but to
6 shift money from TV advertising to internet
7 advertising or print advertising, isn't that
8 right?

9 A Correct.

10 Q Or out of advertising entirely and
11 spend it in some other marketing effort, isn't
12 that right?

13 A Hope not, but yes.

14 Q But that has happened in fact,
15 hasn't it?

16 A Yes.

17 Q Now, in fact, do you recall that
18 recently [REDACTED] made a decision to cuts its
19 advertising budget and instead spend a
20 significant amount of those dollars on in-
21 store marketing efforts?

22 A I am not aware of that.

1 Q You didn't know that.

2 A I did not.

3 Q So when you were testifying in
4 your written direct about [REDACTED]
5 advertising decision, you were not aware of
6 that consideration.

7 A That was not brought up in our
8 conversations with them.

9 Q And you are only privy to what
10 they told you.

11 A Correct.

12 Q The discussions they had behind
13 the scenes would not be reflected in your
14 testimony.

15 A Correct.

16 Q [REDACTED] had a new Chief Marketing
17 Officer recently, did they not?

18 A I don't know.

19 Q You don't know one way or the
20 other?

21 A I don't know one way or the other.

22 Q Would you agree that when a new

1 Chief Marketing Officer takes over one of
2 their first considerations is whether they
3 should continue what the last guy was doing
4 that got that last guy fired?

5 A I would imagine it is a
6 consideration, yes.

7 Q In fact, do you recall that you
8 have stated that precise formulation several
9 times in your e-mails?

10 A Yes.

11 Q Yes. So it is your point of view
12 that a new chief marketing officer very well
13 might be inclined to scrap what was done
14 before and take a different path.

15 A Yes.

16 Q Okay. And you are aware that both
17 [REDACTED] and [REDACTED] have had new CMOs in
18 recent years?

19 A I am aware of [REDACTED] yes.

20 Q Are there other NFL Network
21 advertisers that also have new chief marketing
22 officers?

1 A I would imagine so, yes.

2 Q And, obviously, you don't blame
3 Comcast for new chief marketing officers
4 taking over your advertisers, do you?

5 A No.

6 Q Are you familiar with the models
7 that [REDACTED] uses to decide how to spend its
8 advertising dollars?

9 A No.

10 Q Are you aware of their ad
11 optimization program?

12 A I am aware it exists. I am not
13 aware of it specifically.

14 Q Do you know who was involved in
15 managing it or how it is used to decide how to
16 spend [REDACTED] advertising dollars?

17 A No.

18 Q So, again, you are basing your
19 testimony about [REDACTED] based only on what you
20 heard, but you are not privy to what goes on
21 within [REDACTED]

22 A Correct.

1 Q Yesterday an expert called for the
2 NFL testified that one thing advertisers worry
3 about is holes in the geographic footprint of
4 a network, is that correct? Do you agree with
5 that testimony?

6 A Do I agree that's something that
7 concerns them?

8 Q Yes.

9 A Yes.

10 Q Okay. Now, what are the -- and
11 NFL Network has some very significant holes in
12 its distribution, does it not?

13 A Yes.

14 Q For instance, NFL Network is not
15 distributed on cable in New York.

16 A Correct.

17 Q And it is not distributed on cable
18 in Los Angeles, by and large.

19 A Correct.

20 Q And it is not distributed on cable
21 in Tampa, correct?

22 A I wouldn't know that.

1 Q Okay. What about in Texas, are
2 there holes in your cable distribution in
3 Texas?

4 A I wouldn't be aware of this.

5 Q Okay. Well, let's stick with New
6 York and Los Angeles. Do you agree that those
7 are holes in the cable distribution of the NFL
8 Network?

9 A Cable, yes.

10 Q Yes. And, in fact, those holes in
11 your distribution have nothing to do with
12 Comcast, isn't that right?

13 A I wouldn't either know or not know
14 about that.

15 Q Comcast wouldn't be able to give
16 you distribution in those places.

17 A I wouldn't know about that. I
18 don't know everywhere Comcast has the
19 availability of distribution.

20 Q Is it important to your ability to
21 sell advertising on the NFL Network that you
22 be reaching the markets where media buyers

1 generally are located?

2 A Yes.

3 Q And what are some of the markets
4 where media buyers are located?

5 A Chicago, New York, Los Angeles.
6 Those are some of the key ones.

7 MR. PEREZ-MARQUES: Now, I would
8 like to mark for identification Comcast
9 Exhibit 522.

10 JUDGE SIPPEL: Pass it up to the
11 witness and myself, and let's see what we
12 have. Is this the first time we have seen
13 this?

14 MR. PEREZ-MARQUES: Yes, it is,
15 Your Honor.

16 JUDGE SIPPEL: When we mark this
17 for identification, how would you want to
18 describe it? Because I'm kind of at sea with
19 this one.

20 MR. PEREZ-MARQUES: Your Honor, it
21 appears to be a slide deck. I can represent
22 that based on the information provided by NFL

1 it is from Mr. Furman's custodial file, and it
2 is -- appears to be a draft presentation or a
3 final presentation regarding the NFL's media
4 sales.

5 JUDGE SIPPEL: Very well. And
6 what year would that be in?

7 MR. PEREZ-MARQUES: It is at least
8 -- it is later than May 25, 2008, but beyond
9 that it is not dated. I would ask the witness
10 to do that.

11 JUDGE SIPPEL: And what month
12 would it be? You said that --

13 MR. PEREZ-MARQUES: It contains
14 data through May 25, 2008.

15 JUDGE SIPPEL: Okay. So circa May
16 2008. And that is identified as Comcast
17 Exhibit 522 for identification. Thank you.

18 (Whereupon, the above-referred to
19 document was marked as Comcast
20 Exhibit No. 522 for
21 identification.)

22 MR. PEREZ-MARQUES: Thank you,

1 Your Honor.

2 BY MR. PEREZ-MARQUES:

3 Q Mr. Furman, do you recognize this
4 presentation?

5 A Generally.

6 Q What do you generally recognize it
7 to be?

8 A A presentation that outlines at
9 some point in time key sales strategies and
10 information that we would pass to our sales
11 team.

12 Q Your sales team being your media
13 sales team?

14 A Media sales team, yes.

15 Q So you are updating them on the
16 state of the advertising sales business?

17 A Or discussing things that -- yes,
18 updating them, that's correct.

19 Q Now, Mr. Furman, I would like to
20 direct you to page 6 of the presentation,
21 which is numbered -- Bates numbered ending in
22 7023. Do you see that page?

1 A I do.

2 Q Do you see that the headline is
3 "More Sizzle, Less Steak." Do you see that?

4 A Yes.

5 Q What does "less steak" refer to?

6 A I can -- I don't know where this
7 was created.

8 Q Did you write these words?

9 A I don't know. I don't recall.

10 Q Now, you see on this slide it says
11 "More Sizzle, Less Steak," and then it has a
12 list of three networks, and then the hours of
13 original or first-run programming on those
14 networks, and then the percentage of total
15 hours that that programming represents, isn't
16 that right?

17 A Yes.

18 Q And the NFL Network is shown as
19 having only 17 percent of its total hours
20 being original or first run, isn't that right?

21 A According to this, yes.

22 Q Yes. Do you have any reason to

1 dispute that figure?

2 A I don't know where these were
3 taken from, but I will take what's on here.

4 Q Well, I can represent to you that
5 the presentation was taken from your files.

6 A I have many presentations that I
7 keep in my files.

8 Q But you don't dispute this 17
9 percent figure.

10 A I don't dispute it is on the page.
11 I don't know if it is, in fact, correct, and
12 I don't know what time of the -- what year it
13 is talking about.

14 Q Now, the remainder of the
15 programming, other than original or first run,
16 would be what, reruns?

17 A Not necessarily. It could be --
18 it could be reairs of programming that we may
19 have gotten from some of our partners. It
20 could be NFL films, highlight films, that we
21 don't consider to be first run for time --
22 because of time out, classic games, things of

1 that nature. Generally, we refer, when we
2 talk internally about first run, to have a
3 broad group of programs that fit into that.

4 Q Okay. So but 83 percent of the
5 programming, if this number is correct, on the
6 NFL Network would be content that is neither
7 original nor first run, correct?

8 A Correct.

9 Q And that is what "less steak"
10 refers to, isn't it? There is less original
11 content, there is less meat on the network.

12 A Yes.

13 Q And what is the "more sizzle"?

14 A I would imagine that that is
15 programming content, the type of programming
16 that the NFL Network carries.

17 Q And when it says "less steak,"
18 that is less steak than who?

19 A I would imagine our number one
20 competitor. Generally, when we speak of ESPN
21 and ESPN 2, we look to them as the apex
22 competitors.

1 Q Okay. So it is meaning less steak
2 than ESPN, is that right?

3 A Yes.

4 Q And doesn't, in fact, the "more
5 sizzle" refer to the high price?

6 A I wouldn't agree to that.

7 Q But what the customers are buying
8 isn't the sizzle, right, it's the steak?

9 A I would neither agree nor disagree
10 to that either.

11 Q And when you go to a restaurant,
12 what you actually can eat is the meat.

13 A How a person talks about the
14 quality of programming and using this jargon
15 is not what you are I believe asking me, which
16 is the quality of programming on any network
17 that they run, is about the popularity of the
18 programming. So programming varies in
19 ratings, and it varies in popularity, and it
20 also varies on whether it has been seen once
21 or twice.

22 Some networks, including ours,

1 have programs that may be repeated that do
2 higher ratings than programs that may only be
3 seen one time. It is about the popularity of
4 the program. I don't know about the
5 restaurant slang.

6 Q And this slide is talking about
7 the amount of original programming as "less
8 steak," isn't that right?

9 A It appears to be, yes.

10 Q Now, if you look at the next page,
11 the next page of the presentation ending in
12 7024, the headline of this slide says "[REDACTED]
13 New Advertisers Equals [REDACTED] New
14 Business." Did I read that correctly, Mr.
15 Furman?

16 A Yes.

17 Q Now, this is all new business that
18 you gained in 2008, correct?

19 A I don't know the timeline for
20 this. It is not indicated on here.

21 Q How much advertising have you
22 gained in the last year?

1 A I would have to go back and take a
2 look.

3 Q Do you have a number of new
4 advertisers?

5 A We do.

6 Q How many?

7 A I don't know.

8 Q And you don't know how much new
9 value of advertising dollars that represents.

10 A No, I don't.

11 Q Did you consider in preparing your
12 direct testimony whether to be fair you should
13 also include the new business, not just the
14 lost business?

15 A Again, not knowing because there
16 is no context listed here on dates and/or
17 elements, this doesn't tell me if it is the
18 NFL Network or NFL.com. And just by looking
19 at it quickly there appear to be some NFL.com
20 advertisers on here also. So, again, I don't
21 know the differentiation between what [REDACTED]
22 [REDACTED] and [REDACTED] -- what [REDACTED] and [REDACTED]

1 new advertisers really means. So --

2 Q Did you -- I didn't mean to cut
3 you off if you weren't finished.

4 A No. I'm done.

5 Q Did you consider to include new
6 business in your written direct testimony that
7 the NFL Network has gained since Comcast
8 tiered?

9 A We work really hard at developing
10 advertising business, as everyone else in our
11 industry does. And more is better. So what
12 we are looking at always is trying to grow
13 that, but we do have advertisers that choose
14 not to renew with us, and those are many times
15 the most important ones that we have, because,
16 as you know, it is often more difficult to get
17 someone back after they have had an experience
18 than to get them in the first time.

19 Q An experience such as being
20 treated in a rude or arrogant way?

21 A That is your commentary.

22 Q Would that be among the

1 experiences that makes it harder to keep
2 someone's business?

3 A Yes.

4 MR. PEREZ-MARQUES: Your Honor, I
5 would like to move that Exhibit 522 into
6 evidence.

7 JUDGE SIPPEL: Is there any
8 objection to that?

9 MR. SCHMIDT: We don't object to
10 his business strategy. I think it is being
11 introduced for the truth of the matter,
12 though, and the witness said he can't verify
13 it. So we just -- we don't object to it
14 coming into evidence, but we don't think it
15 will have any probative value as brought in.

16 JUDGE SIPPEL: What is your
17 response to that, Mr. Perez?

18 MR. PEREZ-MARQUES: Your Honor,
19 this document shows how either Mr. Furman
20 himself, if he is misremembering, or others
21 within his organization characterized the
22 quality of the content on NFL Network, which

1 is a core issue in this proceeding.

2 MR. SCHMIDT: Your Honor, there is
3 absolutely --

4 MR. PEREZ-MARQUES: They refer to
5 it as having "less steak" than competitive
6 national sports networks, and that is
7 precisely what Comcast's position is in this
8 litigation, that there is not enough steak as
9 part of this network to justify the exorbitant
10 price the NFL is seeking.

11 MR. SCHMIDT: Your Honor, there is
12 absolutely no basis to accuse the witness of
13 misremembering anything. I just want to make
14 that absolutely clear.

15 JUDGE SIPPEL: I'm sorry. Accuse
16 the witness of what?

17 MR. SCHMIDT: Of misremembering
18 anything, which was Mr. Perez's opening
19 comment.

20 JUDGE SIPPEL: Yes. I will
21 disregard that. Strike it. I am just trying
22 to -- well, you've got his testimony. I don't

1 think this is going to add anything, and it is
2 just -- it has got -- there is a lot of pages
3 in here that have numbers all over the place
4 that he hasn't testified to.

5 It might be significant for
6 something, but I can't find it. I am going to
7 reject it as an exhibit. You've got his
8 testimony, he has testified to numbers, he has
9 testified to steak sizzles, and, you know, you
10 can make of it what you will. But I don't see
11 how the document really adds to anything.

12 MR. PEREZ-MARQUES: Your Honor,
13 would it simplify matters if we moved only the
14 page as to which he testified into the record?

15 JUDGE SIPPEL: That would help me.

16 MR. PEREZ-MARQUES: Then, we would
17 ask that that be marked.

18 JUDGE SIPPEL: Well, let's take
19 the first one, because that is the one that is
20 identified, the cover sheet that is, which is
21 7018, in conjunction with the one page that he
22 has testified to. And I would -- as I say, I

1 just would refer to that or consider that to
2 be as a supplement to his testimony. I am not
3 saying it has got probative value, certainly
4 not in and of itself.

5 So those two pages are now Comcast
6 Exhibit 522 for identification. Do you want
7 to move them in?

8 MR. PEREZ-MARQUES: Yes, Your
9 Honor.

10 JUDGE SIPPEL: Objection?

11 MR. SCHMIDT: Same statement that
12 I made before, Your Honor.

13 JUDGE SIPPEL: All right. Well, I
14 will take that as an objection. I am
15 overruling it in light of the modification he
16 made, and it is received as modified as
17 Comcast Exhibit 522 as a two-page document.
18 Okay.

19 (Whereupon, the above-referred to
20 document, previously marked as
21 Comcast Exhibit No. 522 for
22 identification, was received into

1 evidence.)

2 JUDGE SIPPEL: Do you have much
3 more, Mr. Perez?

4 MR. PEREZ-MARQUES: No, Your
5 Honor. I am actually wrapping up right this
6 minute. I just need one moment to check my
7 notes.

8 JUDGE SIPPEL: Do you know how
9 often I have heard that comment?

10 (Laughter.)

11 Or that response to my question.

12 (Laughter.)

13 BY MR. PEREZ-MARQUES:

14 Q Now, Mr. Furman, this afternoon we
15 talked about a number of reasons that the NFL
16 Network could lose advertising. Now, have you
17 made any effort to quantify the total effect
18 of all of those reasons put together, all of
19 these reasons that you testified have nothing
20 to do with Comcast on the advertising
21 performance of the NFL Network?

22 A No.

1 MR. PEREZ-MARQUES: No more
2 questions, Your Honor.

3 JUDGE SIPPEL: Any redirect?

4 MR. SCHMIDT: Yes, Your Honor.

5 JUDGE SIPPEL: Okay.

6 MR. SCHMIDT: Could I just have a
7 few seconds?

8 JUDGE SIPPEL: Do you want a few
9 minutes?

10 MR. SCHMIDT: Sure.

11 JUDGE SIPPEL: Let's go off the
12 record.

13 (Whereupon, the proceedings in the
14 foregoing matter went off the
15 record at 4:06 p.m. and went back
16 on the record at 4:16 p.m.)

17 JUDGE SIPPEL: We are on the
18 record.

19 Mr. Schmidt?

20 MR. SCHMIDT: Thank you, Your
21 Honor.

22 REDIRECT EXAMINATION

1 BY MR. SCHMIDT:

2 Q Just a few questions, Mr. Furman,
3 to clear a few things up. Do you have in
4 front of you Comcast Exhibit 506, the one that
5 talks about Digital 2 and --

6 A Yes.

7 Q This is the one, do you recall,
8 where Mr. Perez repeatedly asked you if this
9 came before Comcast actually dropped the NFL,
10 do you remember that?

11 A Yes.

12 Q When was it that Comcast actually
13 announced that it was going to tier the NFL,
14 do you recall?

15 A I believe it was in late 2006.

16 Q Okay. Was it before the date of
17 this document?

18 A I am not aware of that.

19 Q Well, let me show you something
20 that has been marked into evidence. NFL
21 Exhibit 20.

22 And I apologize -- I pulled it out

1 of my binder, I don't have an extra copy, but,
 2 Your Honor, I will pass it to you if you want
 3 to look at my copy. It is just a newspaper
 4 article, and I will pass it to --

5 JUDGE SIPPEL: No. You can
 6 identify it and just -- it won't be used as an
 7 exhibit. It will be used just to -- but it
 8 will be -- it will be on the record. You can
 9 explain what it is. I don't have a notation
 10 on 506 as having been received, so just in
 11 case, it is identified, I am going to receive
 12 it into evidence at this time as Comcast 506.

13 (Whereupon, the above-referred to
 14 document, previously marked as
 15 Comcast Exhibit No. 506 for
 16 identification, was received into
 17 evidence.)

18 And I want to ask the witness, who
 19 is Adam Shaw? Did we talk about him?

20 THE WITNESS: We did, Your Honor.
 21 He was the gentleman senior to Mr. Marques
 22 responsible for working with our affiliates,

1 the people who carry the NFL Network on their
2 cable tiers.

3 JUDGE SIPPEL: I think I remember
4 that now. Thank you.

5 MR. SCHMIDT: And, Your Honor --

6 JUDGE SIPPEL: And I've got to
7 ask, Mr. Perez, do you have any objection to
8 this procedure? I mean, obviously, you have
9 to show it to Mr. Perez.

10 MR. SCHMIDT: Let me actually
11 state something before.

12 JUDGE SIPPEL: Yes, sir.

13 MR. SCHMIDT: Because I misspoke
14 -- I thought this was one of our exhibits. It
15 turns out it is Exhibit 20 to our complaint,
16 so let me go ahead, if I may, and pass it to
17 Mr. Perez.

18 JUDGE SIPPEL: Exhibit 20 to the
19 complaint?

20 MR. SCHMIDT: Yes. It is a
21 newspaper article or an online article, a fact
22 that I don't think is in dispute.